

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

June 4, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: January 30, 2008

Case Number: TSO-0593

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual's access authorization should be not be restored.

I. BACKGROUND

The individual is an employee of a Department of Energy (DOE) contractor, and has held a DOE access authorization continuously from 2001 until it was suspended in connection with the current proceeding. In June 2007, the DOE conducted a Personnel Security Interview (June 2007 PSI) with the individual regarding unresolved alcohol concerns. The PSI did not resolve the concerns and, subsequently, the individual was evaluated in August 2007 by a DOE-consultant psychiatrist (the DOE-consultant psychiatrist), who issued a report containing his conclusions and observations. See Case Evaluation Sheet at 1, DOE Exhibit 2.

In November 2007, the Manager for Personnel Security of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. Enclosure 2 to this letter, which is entitled "Information Creating a Substantial Doubt Regarding Eligibility for Access Authorization," states that the individual's behavior has raised security concerns under Sections 710.8(h) and (j) of the regulations governing eligibility for access to classified material (Criteria H and J). Specifically, the Enclosure states that the DOE-consultant psychiatrist diagnosed the individual as meeting the criteria for "Alcohol Abuse", as

specified in the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV TR). He further concluded that the individual has been a user of alcohol habitually to excess and suffers from an illness or mental condition that causes, or may cause, a significant defect in the individual's judgment or reliability.

Enclosure 2 also refers to the following information concerning the individual's use of alcohol that he reported at the June 2007 PSI and during his August 2007 psychological evaluation.

1. He admitted to consuming 48 beers each week and drinking to intoxication seven nights a week, despite his doctor's recommendation to reduce his alcohol consumption. Over the last six months, he has consumed as many as 16 beers in one day.
2. He admitted that his alcohol consumption is partially responsible for liver enzyme levels that are suggestive of substantial liver damage.
3. His spouse is concerned about his alcohol use, but he does not feel that his alcohol use is more than a "little" problem.

Finally, Enclosure 2 refers to the individual's two alcohol-related arrests: a September 1987 arrest for Driving Under the Influence (DUI) with a blood alcohol measurement of .12, and an April 1984 arrest for DUI, with a blood alcohol measurement of .08.

The individual requested a hearing (hereinafter "the hearing") to respond to the concerns raised in the Notification Letter. In his initial written response to those concerns, the individual admitted that he provided the DOE with the information that appears in Enclosure 2 concerning his alcohol consumption. However, he believes that, on reflection, he may have overestimated his level of consumption. He asserted that since 1987, he has been careful not to drink and drive, and that generally he consumes alcohol at home on afternoons or evenings when he does not intend to go out. He conceded that his past pattern of alcohol consumption constituted "habitual use to excess" or "Alcohol-Related Disorder Not Otherwise Specified" but contended that he did not meet the DSM-IV TR criteria for Alcohol Dependence or Alcohol Abuse. He admitted that alcohol is partially responsible for "any liver damage I might have," but he disputes that there is any evidence of substantial liver damage. Finally, he stated that because he recognized that his alcohol consumption was impacting his employment, he stopped consuming alcohol in early October 2007, and that he recently began to see a licensed substance abuse counselor

the Individual's psychologist). Individual's December 14, 2007, Response to Notification Letter.

The hearing in this matter was convened in March 2008. At the hearing, the testimony focused on the nature and extent of the individual's alcohol problem, and the accuracy of the DOE-consultant psychiatrist's diagnosis. It also focused on the individual's efforts to document his period of abstinence from alcohol, and the extent of his commitment to future sobriety.

II. HEARING TESTIMONY

At the hearing, testimony was received from nine persons. The DOE presented the testimony of the DOE-consultant psychiatrist. The individual testified and presented the testimony of his psychologist, his physician, his wife, his manager, his project leader, his former project leader, and his mentee.

A. *The DOE-consultant Psychiatrist*

The DOE-consultant psychiatrist testified that when he evaluated the individual in August 2007, the individual did not believe that alcohol was a problem in his life. TR at 54. He stated that he administered several psychological surveys to the individual, including the Personality Assessment Inventory (PAI) and the Substance Abuse Subtle Screening Inventory (SASSI), and that his responses indicated problems with alcohol, a high degree of defensiveness and a tendency to minimize the negative impact of his alcohol consumption. TR at 45; 48-51.

In particular, he stated that the individual's responses on the Mini Patient Health Survey (MPHS) indicated that the individual had consumed more than three alcoholic drinks within a three-hour period on three or more separate occasions; that he had failed in attempts to cut back on his drinking; and that he has continued to drink, although he is aware that alcohol consumption has caused him problems. TR at 49. He stated that the individual admitted to drinking eight to ten beers a day, seven days a week; buying at least two cases of beer a week; and that he last drank to intoxication the night before the evaluation, when he consumed six beers. TR at 42-44. He also stated that the individual's two prior DUI arrests are significant because persons with multiple DUI arrests are at a very high risk for having a diagnosable alcohol disorder. TR at 45.

The DOE-consultant psychiatrist concluded that based on the individual's maladaptive pattern of alcohol use, his past DUI arrests, his current usage, his health, his family history, and the alcohol problems revealed by the MPHS and other surveys, the

individual met the DSM-IV TR criteria for Alcohol Abuse¹. TR at 52-54.

The DOE-consultant psychiatrist also concluded that the individual has an illness or mental condition which may cause a significant defect in judgment or reliability. TR at 54. He stated that the individual demonstrated poor judgment in consuming alcohol prior to his psychiatric interview and poor judgment in continuing to maintain that alcohol is a minor problem for him, despite several discussions with DOE security personnel concerning his alcohol consumption, and a PSI and a psychiatric evaluation in 2007. TR at 55.

The DOE-consultant psychiatrist stated that at the time of his August 2007 evaluation, the individual had not acknowledged his alcohol problem, and had made no efforts at rehabilitation or reformation. TR at 54. The DOE-consultant psychiatrist testified that in his report, he indicated that the individual must successfully complete one of two rehabilitation programs² - AA or an Alcohol Abuse treatment program, and demonstrate two years of absolute abstinence to show adequate evidence of reformation from Alcohol Abuse. TR at 56. He testified that without treatment, the individual must demonstrate three years of abstinence as adequate evidence of reformation. TR at 56.

B. The Individual

With regard to his alcohol consumption, the individual testified that at the time of his 2007 PSI, he consumed eight to ten beers on the weekends. TR at 159. He further testified that on weekdays, he consumed about six beers a night or two 12-packs of beer over four nights, over a period of five hours each night. TR at 159.

1/ The DOE-consultant psychiatrist opined that the individual may also meet the DSM-IV TR criteria for alcohol dependence; however, he did not reach that conclusion in his August 2007 psychiatric report. TR at 52-53.

2/ At the time of the hearing, the individual had not enrolled in Alcoholics Anonymous or any professionally led, alcohol abuse treatment program.

The individual stated that on rare occasions, such as a holiday or over a weekend, the most alcohol he could recall consuming was 14 to 16 beers which, for him, amounts to one beer every 45 minutes. TR at 160-161.

The individual testified that he does not believe that he has an alcohol problem because he has been able to stop drinking. TR at 162. He stated that his drinking has not caused any permanent physical damage, but he does, however, agree that his alcohol consumption was a medical problem for him. TR at 162-163.

The individual testified that he chose to ignore his doctor's advice to reduce the amount of alcohol that he consumed because he did not think it was necessary to make that lifestyle adjustment. TR at 165. The individual asserted that he continued to drink after his June 2007 PSI because he did not think that his alcohol consumption was an issue. TR at 166. He also stated that he chose to drink before his interview with the DOE-consultant psychiatrist because he did not believe that he had an alcohol problem. TR at 166. The individual believes that alcohol consumption was not a problem in his life until his reported alcohol consumption resulted in his security clearance being suspended in October 2007. TR at 166.

The individual admits that initially, his sole reason for abstaining from alcohol was because he believed it would improve his chances of having his security clearance restored. TR at 161. He stated that since he has refrained from consuming alcohol, his liver enzymes have returned to normal. TR at 161. He testified that he is now convinced that there was a problem and that he needs to continue to refrain from consuming alcohol to avoid future impact on his health. TR at 161.

The individual testified that he currently consumes non-alcoholic beer, which contains .4 percent alcohol, or "the equivalent of less than a third of regular beer over five hours." TR at 170. He reiterated that he has abstained from alcohol since October 2007. TR at 170. He testified that his future intention is to consume no alcohol on a daily basis, but that he plans to consume some alcoholic beverages on special occasions. TR at 167-168; 170.

C. The Individual's Psychologist

The individual's psychologist is a psychotherapist in private practice. TR at 68. She testified that she first encountered the individual when he contacted her through his Employee Assistance Program (EAP). TR at 72. She testified that during the first interview, the individual stated that he had some issues involving his security clearance, and wanted to explore the extent of any alcohol problem that he may have. TR at 74. She stated that he

raised the issue of his security clearance being jeopardized but deferred to her judgment on the issue of Alcohol Abuse. TR at 74-75.

The individual's psychologist testified that she conducted a "fairly comprehensive" evaluation of the individual and administered the SASSI, a psychological screening measure that helps identify individuals who have a high probability of having a substance abuse disorder. TR at 102; 72-73; 77. She testified that after her evaluation of the individual, she concluded that no evidence of a diagnosable disorder for substance abuse and/or dependence existed. TR at 87-99. She stated that her opinion was based on the results of the SASSI, which indicated that the individual has a low probability of substance dependence. TR at 77.

The individual's psychologist stated that she did not agree with the DOE-consultant psychiatrist's diagnosis of Alcohol Abuse that approaches Alcohol Dependence. TR at 87-88. She testified that the individual informed her that he consumed six to eight drinks a day on most days, including week nights and weekends. She did not recall him telling her that he consumed high amounts on rare occasions, such as 14 to 16 drinks, and she could not recall the individual telling her that he drank more heavily on weekends. TR at 75-76. She stated that she did not believe the individual's consumption of six drinks a day to be excessive because it was his standard consumption level, and while this level of consumption may be excessive for some, it did not affect him in a negative way. TR at 91; 96. She testified that although the individual continued to drink beyond his August 2007 psychiatric interview, it did not indicate an alcohol problem because, until his clearance was pulled, the individual was not aware that his alcohol use was a significant issue. TR at 91. She agreed with the DOE-consultant psychiatrist that the existence of two DUIs is evidence of a high probability of having a substance abuse problem. However, she stated that the individual's DUIs occurred over 20 years ago and had no further impact on his life. TR at 95.

The individual's psychologist testified that although her report indicated that the individual approached his assessment in a "defensive manner," she did not believe that it led to an understatement of a substance abuse problem. TR at 84. She stated that the individual's results may merely reflect situational factors, such as concern about his employer's scrutiny or feeling unjustifiably accused. TR at 85; 99-100. She stated that during the interview, the individual was very open and did not seek to prove that he did not have a substance abuse problem. TR at 85.

During the hearing, the individual's psychologist learned that the individual made attempts to stop drinking and failed, and that he

continued to drink although it was causing him problems. TR at 102. The individual's psychologist testified that the individual had not presented this information during their interview and agreed that failed attempts to stop drinking when it has caused problems are an indication of Alcohol Abuse. TR at 101-102.

D. The Individual's Physician

The individual's physician testified that the individual and his family have been his patients for six years. TR at 148. He testified that the individual's liver enzymes were previously a concern because they were elevated more than two times above normal levels. TR at 150. He testified that, to the best of his recollection, at the time that the individual's liver enzyme levels were found to be elevated, the individual indicated that he consumed two to three alcoholic beverages approximately five nights a week. TR at 151. In response to the individual's test results, he stated that he advised the individual to decrease the amount of alcohol and avoid taking over-the-counter medications, such as acetaminophen, which could also elevate his liver enzymes. TR at 152-153.

He testified that he was aware of the individual's elevated enzyme levels from 1995 until 2007, but could offer no explanation for the elevation during that time frame. TR at 153. He testified that while there was a possibility that the individual's alcohol consumption may have contributed to his elevated liver enzymes, he did not advise him to discontinue his alcohol usage. TR at 154.

The individual's physician testified that recent tests indicated that the individual's liver enzymes had returned to nearly normal levels. He acknowledged that liver tests conducted on December 17, 2007, and March 10, 2008, showed that the individual's enzyme levels were now within normal limits. TR at 149, citing Individual's pre-hearing exhibits 3 and 4, and Hearing Exhibit 3.

E. The Individual's Wife

The individual's wife testified that she and the individual have been married for almost 27 years. TR at 13. She stated that during the week, the individual lives and works in another city and comes home for the weekend on Friday evenings. TR at 26-28. She testified that she does not know how much the individual drinks during the week because she doesn't usually visit him at that time. TR at 28-29.

She testified that she last saw the individual consume alcohol in September 2007. TR at 14. She testified that currently, the individual's beverage consumption consists of iced tea and non-alcoholic beer, along with some water and an occasional drink of

regular Dr. Pepper. TR at 14. She stated that based on the individual's recent liver enzyme tests, she does not believe that he is currently consuming alcohol. TR at 14-15.

She testified that in the past, she raised a concern with the individual regarding his alcohol consumption because she was troubled by the number of empty beer cans she saw in the trashcan on Saturdays and Sundays. TR at 17. She testified that the most that she could recall seeing in the trashcan at one time was eight empty beer cans. TR at 17-18.

She testified that she expressed concern about his liver enzyme tests in the past, because they were elevated beyond normal. TR at 15. She explained that following his elevated liver enzyme tests in 2003, his physician suggested that he might want to cut back on his alcohol consumption, but that he never advised the individual to stop drinking. TR at 16. She testified that she had hoped that the doctor would use the individual's elevated liver enzymes as a reason to examine the individual's alcohol consumption, but he did not. TR at 22.

She testified that once she saw the individual's elevated liver enzyme results, it was an indication to her that alcohol was a problem. TR at 24. She acknowledged that the individual also had problems with rebound headaches and was taking too much Tylenol. TR at 25. She stated that she feels it is in the individual's best interest not to drink alcohol at this point, but doesn't believe he has a problem with alcohol because he has stopped drinking in the past. TR at 22; 24. She stated that in response to the suspension of the individual's security clearance, they both decided that counseling would be proactive and would demonstrate to the DOE that the individual was serious about addressing the DOE's alcohol concerns. TR at 23.

F. The Individual's Manager

The individual's manager testified that he has known the individual for about ten years. TR at 110. He stated that the individual is an excellent worker and has a good reputation for honesty and truthfulness. TR at 113. He testified that the individual is an outstanding employee who is highly rated. TR at 116.

He indicated that he did not know that the individual consumed alcohol, nor has he ever seen the individual consume alcohol. TR at 111-112. He stated that a person who abuses alcohol and comes in contact with classified information can be a "pretty serious" problem, because his company cannot afford to have lapses in security. TR at 116.

G. The Individual's Project Leader

The individual's project leader testified that he has known the individual for about 15 to 20 years, and has worked closely with him since about 2002. TR at 122. He stated that he and the individual have traveled several times together, by his estimate about 18-20 times per year. TR at 121. He testified that during the few times he has seen the individual consume alcohol, he has never seen the individual drink more than one beer on a social occasion. TR at 121. He stated that the last trip they took together occurred in mid-July 2007 and that he did not observe the individual drink any alcohol during the trip. TR at 124-125. He stated that the individual's behavior in the workplace is very consistent, and that he has displayed no observable indications of prior alcohol consumption. TR at 126. He stated that he believes the individual is truthful to a fault, and very capable. TR at 127.

H. The Individual's Former Project Leader

The individual's former project leader testified that he has known the individual for about twenty years and considers him a friend. He stated that they socialize at the workplace and continue to have lunch together. TR at 132. He described the individual as an outstanding employee who has always been brutally honest in work situations. TR at 130. He stated that he has never known the individual to handle classified information inappropriately. TR at 131.

He stated that the individual has never exhibited alcohol problems in the workplace. He also stated that while he was aware that the individual consumed alcohol, he was not aware of any excessive alcohol use, and he has never witnessed the individual consume alcohol. TR at 132-134. He stated that he only learned of the individual's high level of alcohol use through the security clearance process, but believes that the individual no longer consumes alcohol. TR at 132; 137.

I. The Individual's Mentee

The individual's workplace mentee has been employed at the company for three years but was recently moved to the individual's department. TR at 141. He testified that he only began working with the individual in the beginning of November 2007 and, during that time, the individual has informally mentored him. TR at 141. He stated that he is not aware of the individual's prior history, and that his contact with the individual is limited to work situations. TR at 142-143. He described the individual as open and honest. TR at 138-139. He stated that he traveled with the

individual to a conference in November 2007, and noted that, although alcohol was available, the individual did not consume alcohol. TR at 141-142.

J. Follow-up Testimony of the Mental Health Professionals

Following the testimony of the other witnesses, the individual's psychologist agreed with the DOE-consultant psychiatrist's recommendation that the individual abstain from future alcohol consumption. TR at 176. She testified that while she does not believe the individual is alcohol dependent, she believes that he has had periods of abusing alcohol and has the potential to develop alcohol dependence. TR at 176-177.

After hearing the other witnesses, the DOE-consultant psychiatrist stated that he believed that the individual's level of alcohol consumption in recent years supports his diagnosis of Alcohol Abuse. TR at 173-174. With regard to the individual's reformation, the DOE-consultant psychiatrist testified that the individual's prospect for maintaining his sobriety is not favorable, because he lacks the motivation that would accompany the recognition that alcohol has been a problem in his life for 15 years. TR at 173.

III. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national

security issues. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing (Case No. VSO-0005)*, 24 DOE ¶ 82,753 (1995), *aff'd*, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

IV. ANALYSIS

The Criteria (h) and (j) security concerns in this proceeding include the individual's diagnosis of Alcohol Abuse, his excessive amounts of daily alcohol consumption, his elevated liver enzymes that are suggestive of alcohol-induced liver damage, his wife's concern about his health and alcohol use, and the individual's arrests for DUI in 1987 and 1984. The individual believes that his five months of sobriety at the time of the hearing, the testimony of his psychologist that he does not suffer from Alcohol Abuse, and his dedication to partially abstain from alcohol in the future fully mitigate these concerns. For the reasons stated below, I conclude that the individual's arguments and supporting evidence do not at this point resolve the DOE's security concerns.

A. *The Individual Suffers from Alcohol Abuse*

In her initial testimony, the individual's psychologist denied that the individual has a diagnosable disorder involving the misuse of alcohol. Moreover, the individual's psychologist testified that psychological screening of the individual indicated that he had a low probability of future substance dependence. However, after listening to the DOE-consultant psychiatrist's concerns and to other testimony, the individual's psychologist expressed agreement with the DOE-consultant psychiatrist's recommendation that the individual abstain from further alcohol use. She also concluded that the individual has had periods of abusing alcohol and has the potential to develop future alcohol dependence.

At the hearing, the individual's psychologist waived in her assessment of the individual's alcohol history and his prognosis, but she continued to maintain that he did not have a current diagnosable alcohol disorder. I am not persuaded by this position, because it appears to rely on an inaccurately low estimate of the individual's alcohol consumption. She testified that the individual told her that he regularly drank six to eight beers a day on both week day evenings and weekends. However, at the hearing, the individual admitted to regularly consuming eight to ten beers a day on weekends, and on rare occasions as much as 14 to 16 beers in a day. This is a significant inaccuracy that undermines her conclusion. In addition, I find that the

individual's psychologist gave insufficient weight to aspects of his alcohol history, especially his willingness to consume large quantities of alcohol when this level of consumption posed a threat to his health and to his career.

The DOE-consultant psychiatrist's testimony indicated that several factors supported his diagnosis of Alcohol Abuse, including: the individual's reported amount of alcohol consumption prior to October 2007; the individual's exercise of poor judgment in continuing to drink prior to and after his psychiatric evaluation and 2007 PSI; his wife's concern about his alcohol use; his elevated liver enzymes; his prior legal problems; and his failed attempts at sobriety.³

I find that the DOE-consultant psychiatrist's diagnosis of Alcohol Abuse is persuasive, based on this analysis. In this regard, I am particularly persuaded by his reliance on the individual's admission that he consumed large quantities of alcohol on a daily basis for several years despite knowing that he had elevated liver enzymes indicating the possibility of substantial liver damage. The testimony at the hearing indicated that the individual reported to his physician as early as 2001 that he was consuming two to three alcoholic beverages five nights a week. At that time, his physician counseled him to reduce his consumption of alcohol because of his elevated liver enzymes. Nevertheless, by 2007, the individual reported consuming six beers a night on weeknights, and high amounts on weekends. The individual also disregarded his wife's expressions of concerns about the effect of his drinking on his health. Finally, I agree with the DOE-consultant psychiatrist's testimony that the individual's failure to eliminate or reduce his alcohol consumption following his 2007 PSI and his psychiatric evaluation indicated a lack of control over alcohol. Accordingly, I accept the DOE-consultant psychiatrist's conclusion that the individual suffers from Alcohol Abuse.

B. The Individual Has Not Demonstrated Reformation or Rehabilitation from Alcohol Abuse

In the administrative review process, it is the Hearing Officer who has the responsibility for deciding whether an individual with alcohol problems has established rehabilitation or reformation. See 10 C.F.R. § 710.27. The DOE does not have a set policy on what constitutes rehabilitation and reformation from alcohol diagnoses, but instead makes a case-by-case determination based on the

³/ With regard to the individual's DUI arrests in 1987 and 1984, I note that they occurred over 20 years ago. However, the DOE-consultant psychiatrist and the individual's psychologist agreed that, with two prior DUI arrests, the individual has an increased risk of future alcohol dependence.

available evidence. Hearing Officers properly give great deference to the expert opinions of psychologists and other mental health professionals regarding the likelihood of relapse. See, e.g., *Personnel Security Hearing (Case No. TSO-0522)*, 30 DOE ¶ 82,772 (2008) (finding of no established rehabilitation); *Personnel Security Hearing (Case No. TSO-0523)*, 30 DOE ¶ 82,779 (2008) (finding of rehabilitation).

In the current proceeding, the DOE-consultant psychiatrist testified that in order for the individual to demonstrate rehabilitation from Alcohol Abuse, he must maintain his sobriety, along with a rehabilitation program, for two years. The DOE-consultant psychiatrist testified that without substance abuse classes or rehabilitation activities, three years of complete abstinence from alcohol is necessary for the individual to demonstrate that he is reformed from Alcohol Abuse and is at low risk for relapsing. After hearing the testimony of the individual and his witnesses, the DOE-consultant psychiatrist also expressed concern because the individual has not acknowledged that alcohol has been an ongoing problem for him for 15 years. The DOE-consultant psychiatrist concluded that without the motivation of recognizing that alcohol is a problem for him, the individual has a reduced likelihood of maintaining his sobriety.

The individual presented testimony and evidence aimed at corroborating that he has responded appropriately to the DOE's concerns by being abstinent from alcohol since early October 2007. Several witnesses attested to the individual's sobriety in the workplace, as well as his honesty and exceptional work ethic. His wife testified that she has not observed him consuming alcohol since September 2007. Finally, the individual presented evidence that his previously elevated liver enzyme levels, which can indicate excessive alcohol consumption, returned to levels within the normal range in December 2007 and remained within the normal range in March 2008.

I find that the testimony at the hearing generally supports the individual's assertion that he has been abstinent from alcohol since October 2007, and that the decrease in his liver enzyme levels appears to indicate that he has substantially curtailed his level of alcohol consumption. However, the individual also testified that he spends Monday through Thursday nights of every work week alone in a house close to his workplace. In the absence of any rehabilitation activities, such as Alcoholic's Anonymous (AA) meetings, that could provide evidence of week-night sobriety, and in light of the fact that the individual admits that he now drinks non-alcoholic beer on weekday evenings, I am not fully convinced that he has completely refrained from alcohol consumption since October 2007.

Even if the individual has not consumed alcohol for five months, that alone is insufficient to demonstrate reformation or rehabilitation from Alcohol Abuse. In his testimony at the hearing, the individual acknowledged that he has abused alcohol in the past. However, the individual does not believe that he currently suffers from Alcohol Abuse, and he has not engaged in any rehabilitation activities such as attending AA meetings or relapse prevention counseling. Furthermore, with regard to future use, he admitted that he plans to consume alcohol on special occasions.

Accordingly, I find reasonable and persuasive the DOE-consultant psychiatrist's professional opinion that five months of sobriety by this individual is insufficient to establish rehabilitation or reformation, and that he remains at an elevated risk for relapsing into the abusive use of alcohol. Accordingly, I find that the individual's access authorization should not be restored.

V. CONCLUSION

For the reasons set forth above, I find that the individual suffers from Alcohol Abuse subject to Criteria (h) and (j). Further, I find that this derogatory information under Criteria (h) and (j) has not been mitigated by sufficient evidence of rehabilitation and reformation. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. It therefore is my conclusion that the individual's access authorization should not be restored. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: June 4, 2008